IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

TUESDAY, THE 5TH JUNE 2007 / 15TH JYAISHTA 1929

Crl.Rev.Pet.No. 1618 of 2004(B)

CRA.144/2003 OF ADDL.SESSIONS COURT (ADHOC-II), ERNAKULAM
CC.448/2000 of JUDL. MAGISTRATE OF FIRST CLASS-I, KOCHI

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REVN. PETITIONER: APPELLANT/ACCUSED:

KUTTAN, S/O. THANKAPPAN,
NEDIYIRIPPIL HOUSE, B/H OF SUB-REGISTRY OF
NARAKKAL, NARAKKAL.

BY ADV. SRI.K.A.MANZOOR ALI
SRI.P.V.KURIACHAN

RESPONDENTS: RESPONDENT/COMPLAINANT & STATE :

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1. SMT.SHYLAJA, D/O. PARAMAN,
KALATHIL HOUSE, NARAKKAL.

2. STATE OF KERALA, REPRESENTED BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY ADV. SRI.T.H.ABDUL AZEEZ
BY PUBLIC PROSECUTOR SRI.C.M.KAMMAPPU

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 05/06/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K.R.UDAYABHANU, J

Crl.R.P.No.1618 of 2004

Dated this the 5th day of June, 2007

O R D E R

The revision petitioner stands convicted for the offence under Section 138 of the Negotiable Instruments Act and sentenced to undergo simple imprisonment for six months and to pay a compensation of Rs.1,65,000/- vide Section 357(3) of the Code of Criminal Procedure.

2. The prosecution case is that a sum of Rs.3,65,000/- was due from the accused and towards discharge of the above liability he issued two cheques for a sum of Rs.1,65,000/- and Rs.2,00,000/- each. The impugned cheque amounting to Rs.1,65,000/- was presented for encashment. But the same was dishonoured for want of funds. The lawyer notice was sent demanding payment. It is the case that a reply notice was received raising false contentions.

3. The evidence adduced in the matter consisted the testimony of PW1, DWs' 1 and 2 and Exts. P1 to P8 and Ext. D1 as defence exhibit. PW1 has testified with respect to the

borrowal of the amount and execution of the cheque and has proved Exts. P1 to P8. Ext. P7, the ledger account of the accused would show that the cheque was dishonoured for want of funds in the account of the accused. The version brought out in the cross examination of PW1 that she is working as a domestic maid and that she is earning an income of Rs.200/- per day. It is his case that he borrowed only Rs.65,000/- in the year of 1994 and that he has repaid the same and at the time of borrowal, she has also insisted for blank cheques and other signed papers. The accused examined DWs' 1 and 2 Police Constables to prove Ext. D1 complaint allegedly filed by PW1 before the local Circle Inspector of Police with respect to a sum of Rs.65,000/- and Rs.3,00,000/- allegedly due from the accused . On the reverse of the same, there is an undertaking allegedly signed by both sides that the accused shall repay at the rate of Rs.500/-. PW1 has denied the writings on the reverse of Ext. D1. It is also seen brought out in the cross examination of DWs' 1 and 2 that Ext. D1 has nothing to do with the case put forward by the accused. But, I find that PW1 has not admitted the alleged agreement on

the reverse side of Ext. D1. It is pointed out by the counsel for the revision petitioner that the amount if repaid at the rate of Rs.500/- it would take sixty years to discharge Rs.3,65,000/-. The accused has sent Ext. P6 reply notice reiterating that he has borrowed only Rs.65,000/- and the same has been repaid. The accused has not testified before the court.

4. Considering the evidence adduced in the matter, I find that a reconsideration of the matter is required and further evidence, if any, from the part of both sides. In the circumstances, the order of the court below is set aside. The matter is remanded to the trial court for fresh adjudication after permitting the parties to adduce any further evidence, if they so desire and untrammeled by any observations contained in this order. The parties shall appear before the Judicial First Class Magistrate Court I, Kochi on 10.7.2007.

The criminal revision petition is disposed of as above.

K.R.UDAYABHANU,
JUDGE

csl